

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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APR 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments, FM
Broadcast Stations (Cheyenne,
Wyoming)MM Docket No. 93-20
RM-8177

To: Chief, Allocations Branch

JOINT REPLY COMMENTSNo. of Copies rec'd
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April 27, 1993

SUMMARY

In this proceeding, the FCC has proposed to allocate a new Class A FM channel to Cheyenne, Wyoming, an already-saturated radio market. In these Reply Comments, the licensees of two radio stations in the Cheyenne market urge the Commission to reject the proposed allocation. The issue is not one of technical feasibility; the proposed channel is purported to be acceptable on that score. Instead, the issue raised here is one of economic feasibility.

The stark reality is that Cheyenne -- a radio market with fewer than 60,000 people -- cannot afford another radio station. The market is already served by eight local radio stations (two of which are bankrupt and off the air, and two more of which emerged from bankruptcy reorganization last year), and the Arbitron ratings for the market show heavy infiltration from stations in the Denver area. Population and retail sales growth have been nonexistent for many years, and recent trends show that the pool for radio advertising revenues is indeed shrinking. Cheyenne is, in short, anything but a prospering radio market.

During the go-go 1980s, the Commission's policies were such that economic considerations had no place in FM channel allocation proceedings. Recently, however, the Commission's decisions have begun to reflect its realization that this damn-the-torpedoes approach to radio has left the industry in despair. New technologies and increased diversification are

sniping at the heels of the service, hundreds of licensed radio stations are dark, and the majority are losing money. Such considerations have formed the basis for radical changes in station ownership and duopoly policies, and have the Chairman of the Commission publicly advocating a freeze on new station authorizations.

What these Reply Comments do is place the general rhetoric in perspective for the radio station owners who are struggling mightily to survive in Cheyenne -- and still meet their public service commitments. The time has come for the Commission to consider the impact that the allocation of a new channel will have on radio in a small market, and to refuse to make an otherwise technically-feasible allocation where, as here, the new station to follow would provide ruinous competition. Moreover, the time for the Commission to consider such factors is at the allocation stage, before too many licensee, applicant, and Commission resources are expended, and while the Commission still has the opportunity to preserve the subject channel for allocation to a market where the public interest actually compels the addition of a first or new audio signal.

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JOINT REPLY COMMENTS

The following radio station licensees (hereafter "Joint Licensees") hereby oppose the proposed allotment of yet another FM radio channel to the already overcrowded Cheyenne, Wyoming radio market:

<u>Licensee</u>	<u>Station</u>
KMUS, Inc.	KMUS(FM), Burns, WY
Blue Sky Broadcasting, Inc.	KLEN(FM), Cheyenne, WY

Joint Licensees have taken the extraordinary step of banding together to comment on the proposed allocation because of the absolutely disastrous effect that the allocation of another FM channel would have on existing Cheyenne stations.

Joint Licenses acknowledge that their comments run counter to the free-wheeling FM allocation policy the Commission adopted in the 1980s. Beginning with the revision of FM classes in MM Docket No. 80-90 and continuing to the present, the Commission's policy has been to encourage the addition of new

allotments wherever technically feasible, without regard to their impact on existing facilities.

In all too many small and medium-size markets throughout the United States, this policy has caused ruinous competition among too many radio stations, and the result has been economic failure, reduced public service, and an increasing number of stations off the air and in bankruptcy. In light of this experience, Joint Licensees respectfully submit that technical feasibility should no longer be the sole consideration in making new allotments. Instead, the Commission should also consider the economic impact of adding a channel on existing stations and their ability to continue to provide public service.

The consideration of economic impact data at the allotment stage is of particularly critical importance in a small market such as Cheyenne, which is already saturated with media outlets, several of which are financially distressed. Considering the adverse impact that the addition of another FM station would have on the economic viability of existing radio stations, the Commission should decline to make the proposed allotment.

I. FM ALLOTMENT POLICIES SHOULD BE HARMONIZED WITH THE COMMISSION'S RECOGNITION OF THE CHANGED REALITIES FACING RADIO BROADCASTERS.

The Commission has recently recognized the economic difficulties facing radio broadcasters. For example, in the

radio multiple ownership rulemaking proceeding,^{1/} the Commission relied in substantial part on the dire economic straights of the radio industry to conclude that it would be appropriate to raise the national radio ownership limit and to relax the radio duopoly rule. In its Radio Recon. decision, the Commission summarized its observations on the state of the radio industry, as follows:

[In the Radio R&O, we] detailed the dramatic increase in competition and diversity in the radio industry over the last decade, noting that there are now over 11,000 radio stations in the United States. We observed as well that the number of non-radio outlets competing with radio stations for audiences and advertising revenue has risen substantially over the same period. . . . We concluded in the [Radio R&O] that this intense inter- and intra-industry competition has produced an extremely fragmented radio marketplace in which existing and future radio broadcasters will be subject to increasingly severe economic and financial stress. We noted that between 1985 and 1990, the growth rate of radio station revenues dropped nearly in half to, on average, six percent, while real per station revenue during this period remained virtually unchanged. Operating profits, on a per station basis, have fallen dramatically since peaking in 1988, and radio's share of local advertising revenues remained essentially flat throughout the 1980s. More than half of all radio stations lost money in 1990, and almost 200 stations are currently silent. Moreover, the

Radio Recon., 7 FCC Rcd at 6387-88 (emphasis added; footnote omitted).

More recently, Chairman Quello has reiterated his long-held views on the over-saturation of the radio market. In a speech at the annual National Association of Broadcasters convention, he noted:

[I am] not too happy with radio's plight today. We must do something about it! First, we should consider proposals limiting the allocation of more licenses. We should thoroughly explore all possibilities of the NAB request for an FM freeze, especially at a time efforts are being made to develop in-band DAB. I'm afraid that in the FCC's quest for competition and diversity, we have over-saturated the market with radio stations to the point that over half cannot support themselves.

Future allocations must be more carefully controlled because broadcasters today face more challenges than ever before -- and new challenges are presented at an ever-accelerating rate. [T]here are an increasing number of competitors for advertising dollars. They include not just broadcasters, but a growing array of specialty publications, music services and cable systems that often sell local ads at "radio rates."

Remarks of Chairman Quello before the NAB/RAB, at 3-4 (released April 19, 1993) (emphasis added).

The Commission's recognition of and reliance upon the economic distress of the radio industry in the radio multiple ownership proceeding, and the increasingly frequent citations to the economic hardships facing stations generally, represent a dramatic change in Commission policy regarding the establishment of new stations. Clearly, the Commission has retreated from its

prior policy that mandated the establishment of as many new facilities as were technically feasible, irrespective of the harm that a new facility would cause to the economic viability and competitiveness of existing stations in the market. Joint Licensees now ask the Commission to apply its new policy and economic awareness to FM channel allotment proceedings such as the instant one, where the addition of a new channel would cause devastating harm to an already distressed radio market.

Joint Licensees support their request with economic data that shows that not only will a new FM station adversely affect existing service to Cheyenne, it is extremely likely that a new facility could not be viably established.^{2/} As shown below in the context of the allotment under consideration in this proceeding, consideration of such economic data at the allotment stage -- before too many applicant and Commission resources have been needlessly expended -- would permit the Commission to determine whether a market can support an additional allotment or whether the public interest would be better served by preserving

^{2/} In the past, the Commission has regularly declined to make FM channel allotments where it finds the establishment of a new station to be technically infeasible (for example, where the available site area is very small and city-grade coverage from a tower in that area likely could not be achieved). See, e.g., Attica and Warsaw, New York, 54 F.C.C.2d 1137, 1139 (1975); Athens, Ohio, et al., 48 R.R.2d 1628, 1632 (Broadcast Bur. 1981). What Joint Licensees seek, in essence, is an extension of that policy to situations of economic infeasibility.

the economic viability of the existing stations serving the market.

II. THE PROPOSED NEW ALLOTMENT WOULD ADVERSELY AFFECT THE ALREADY PRECARIOUS ECONOMIC VIABILITY OF EXISTING MARKET STATIONS.

A. Economic Base Of The Cheyenne Market.

Cheyenne is a small market. According to 1990 Census data, Cheyenne is the 347th largest Metropolitan Statistical Area (MSA), with a population of 73,600. Arbitron ranks the market as the 260th, with a population of 59,400. In 1989, per capita income was only \$11,930 -- well below the national average.

Retail growth, an important economic indicator for radio is nonexistent. According to the local Chamber of Commerce, the number of retail businesses in Cheyenne has remained static at about 1,200 for more than ten years, and the number may actually be shrinking as a result of a phenomenon known as the "Wal-Mart syndrome."^{3/} Local businesses generated

^{3/} The Wal-Mart syndrome is the name given by small market retailers and media outlets to describe the effect on the local economy of large national chain retailers. Due to volume discounts, such chains can offer prices substantially below those available to small local retailers, which traditionally advertise on local radio. This fierce price competition often runs small retailers out of business entirely or reduces their profit margins so much that they can no longer afford radio advertising. The Wal-Mart syndrome also directly affects local radio stations, as the large national chains rarely, if ever, advertise on local radio. They prefer to rely upon national television advertising, direct mail and newspaper inserts. Thus, radio
(continued...)

Further, the prospects are not bright for Cheyenne. Overly reliant upon the state, local and federal governments for employment -- some 40-45 percent of the area's labor force is employed by government entities -- Cheyenne is now facing the economic realities of the 1990s. For example, the state government faces serious revenue shortfalls, which have already resulted in personnel layoffs. It is anticipated that there will also be substantial cut-backs at the local military air base.

The Spring 1992 Arbitron report lists five radio stations that directly serve the Cheyenne market, two AM's and three FM's.^{4/} Two additional stations have dual community

stations lose an important traditional revenue source, which is not replaced by new entrants to the retail market. Cheyenne now is home to one Wal-Mart store, one Sam's Club (owned by Wal-Mart), and one K-Mart (a super-store which ~~replaces the top K Mart store which had previously owned~~

(Laramie/Cheyenne) licenses.^{5/} Finally, Cheyenne receives signals from numerous northern Colorado stations, including several which receive sufficient listenership to be listed in Cheyenne's Arbitron ratings.^{6/}

Other media outlets competing for local advertising revenues include two local daily newspapers (in a city with a 1990 population of only 50,008), as well as three out-of-market dailies, one weekly newspaper, one weekly shopper, two monthly newspapers (one published by the local community college), two local television stations (both network- affiliates), a local cable system featuring 40 channels (six or seven of which include local ads) that enjoys 85 percent market penetration, three local direct mail firms, and four outdoor advertising firms. Clearly, Cheyenne is a highly competitive advertising market.

C. Current State Of Cheyenne Radio Market.

The impact of this competition is evidenced by the severe financial difficulties local radio stations have experienced. Two stations, KUUY and KKAZ, entered Chapter 11 bankruptcy protection in 1991, which in January 1992 was converted to a Chapter 7 liquidation proceeding, and as noted

^{5/} Those stations are KCGY(FM) and KRQU(FM). Like KSHY, KCGY was listed by Arbitron in Spring 1991, but not in Spring 1992.

^{6/} Indeed, Arbitron's Spring 1992 ratings for Cheyenne include more Denver stations (seven) than Cheyenne stations.

above, have been silent for over a year. Similarly, KFBC and KFBQ recently emerged from Chapter 11 protection.

The total radio advertising revenue for the entire Cheyenne market was estimated to be approximately \$2.5 million for 1992. On the basis of the Spring 1992 Arbitron figures, where twelve stations had a 1.0 share or greater in the Cheyenne market (7 Denver stations and 5 Cheyenne stations), average per-station revenues were only \$208,333. If the two dark stations and KSHY are included, per station revenues drop to \$166,666. If a new station is allocated, the per station share of advertising revenues drops another 11% -- to \$147,058.

D. Impact Of A New Station On
 Public Service Programming.

In view of the highly competitive market and the financial difficulties described above, local radio stations struggle to meet the public affairs and public service programming needs of the community. Joint Licensees estimate that the local Cheyenne stations provide between 32 and 67 minutes per station of public service spot announcements each day. Stations KRAE and KFBC each air daily, one-hour locally produced talk shows, and other stations (including KMUS) provide various additional public service programs. Furthermore, KMUS, KFBC/KFBQ and KRAE currently employ full-time news/public service personnel.

The ability of these stations to continue to produce and air public service programming would be dramatically affected by the addition of a new competitor to the market.

Traditionally, when stations suffer financial difficulties, the earliest cost-cutting measures include either laying off news/public service personnel or changing their status to part-time. It is likely that this industry practice would be followed in Cheyenne if competition increased for the already-shrinking local advertising "pie."

**III. THE COMMISSION SHOULD
REJECT THE PROPOSED ALLOTMENTS.**

Only six of the eight stations licensed to the Cheyenne market are currently operating, and those stations are struggling to remain profitable. It will be difficult enough for existing broadcasters in Cheyenne to absorb the revenue impact that the re-commencement of operations by the two dark stations would cause. The addition of a ninth local radio station to the market would have a cumulatively devastating impact on local service to the public in Cheyenne, and gives rise to the inescapable conclusion that the new station itself would be very unlikely to survive.

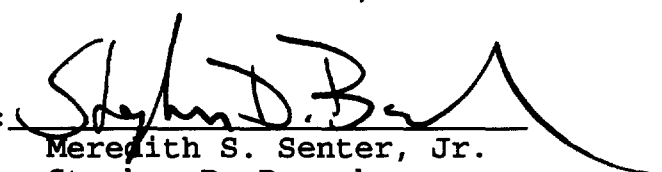
In view of the increasingly important role economic conditions are playing in the Commission's decisions on radio ownership and in its public calls for forthcoming regulatory actions, the time is right for economic impact data to be

considered in FM channel allocation proceedings such as the instant one. The public is ill-served by the allocation of a new service when the new station will inevitably enter into destructive competition with existing operators. Moreover, the Commission should consider economic impact data as an allocation-stage matter -- i.e., deciding the issue of impact before too many licensee, applicant, and Commission resources are expended -- in order that it can preserve the channel for future allocation to a market that would benefit both economically and from a diversity standpoint from a new audio service.

For the foregoing reasons, Joint Licensees respectfully request the Commission to refuse to allot the requested channel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Katharine B. Squalls, hereby certify that a true and correct copy of the foregoing "Joint Reply Comments" was sent by first-class postage prepaid mail this 27th day of April 1993 to the following:

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